

# Court of Appeals, State of Michigan

## ORDER

Paulette Hemphill v Joe Randazzo's Fruit and Vegetable Inc

Docket No. 268532

LC No. 05-515885-NO

Kurtis T. Wilder  
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly  
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the February 14, 2006, order of the Wayne County Circuit Court is REVERSED. In *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523; 629 NW2d 384 (2001), the Michigan Supreme Court stated that potholes in pavement are an "everyday occurrence" that ordinarily should be observed by a reasonably prudent person. The fact that plaintiff was alighting from a parked vehicle when she fell on the pothole in the parking lot does not transform this proposition into a question of fact, as the trial court ruled in denying defendant's motion for summary disposition. Instead, under the circumstances and evidence presented, it is reasonable to expect that "an average person with ordinary intelligence" would have discovered the pothole upon casual inspection of the ground before alighting from the vehicle. See *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005). Because the pothole in defendant's parking lot was open and obvious, defendant was not under any duty to protect plaintiff from the risk posed by the pothole, and therefore, the trial court erred in denying defendant's motion. Accordingly, the matter is REMANDED for entry of an order dismissing plaintiff's premise liability claim.

The Court retains no further jurisdiction

Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 09 2006

Date

Sandra Schultz Mengel  
Chief Clerk